

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	EB Docket No. 02-21
)	
PENINSULA COMMUNICATIONS, INC.)	
)	
Licensee of stations)	File No. EB 01-IH-0609
KGTL, Homer, Alaska;)	FRN: 0001-5712-15
KXBA(FM), Nikiski, Alaska;)	Facility ID Nos. 52152
KWVW-FM, Homer, Alaska; and)	86717
KPEN-FM, Soldotna, Alaska.)	52145
)	52149
)	
Licensee of FM translator stations)	
K292ED, Kachemak City, Alaska;)	52150
K285DU, Homer, Alaska;)	52157
K285EG and K272DG, Seward, Alaska)	52158 and 52160
)	
Former licensee of FM translator stations)	
K285EF, Kenai, Alaska;)	
K283AB, Kenai/Soldotna, Alaska;)	
K257DB, Anchor Point, Alaska;)	
K265CK, Kachemak City, Alaska;)	
K272CN, Homer, Alaska; and)	
K274AB and K285AA, Kodiak, Alaska)	

To: The Commission

REQUEST TO REOPEN THE RECORD
AND FOR OFFICIAL NOTICE

Peninsula Communications, Inc., (hereafter "PCI"), by its attorney, hereby respectfully requests that the Commission reopen the record in this proceeding and take official notice of certain provisions in H.R. 4818, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act) which was signed by the President and enacted into law on December 8, 2004. For good cause, PCI respectfully submits the following.

1. On December 8, 2004, President George W. Bush signed H.R. 4818, the Consolidated Appropriations Act, 2005, and it was duly enacted into law. The

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Consolidated Appropriations Act of 2005 contains, *inter alia*, TITLE IX--SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004. Section 213 to Title IX, as enacted into law, reads as follows:

SEC. 213. AUTHORIZING BROADCAST SERVICE IN UNSERVED AREAS OF ALASKA.

Title III of the Communications Act of 1934 is amended as follows:

(1) In section 307(c)(3)--

(A) by striking ``any hearing" and inserting in lieu thereof ``any administrative or judicial hearing"; and

(B) by inserting ``or section 402" after ``section 405".

(2) In section 307, by adding at the end the following new subsection:

``(f) Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.".

(3) In section 312(g), by inserting before the period at the end the following: ``; except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated".

PCI respectfully requests official notice on this newly enacted legislation.

2. Good cause exists for this request. As an initial matter, the subject legislation was only enacted into law within the past week and is, therefore, a matter that could not have been brought to the Commission's attention previously. PCI has expeditiously brought the change in the Communication Act to the attention of the Commission

following the enactment by the Congress and the President.

3. In addition, the subject modifications in the Communications Act are directly relevant, and controlling, on matters before the Commission in the above-captioned proceeding. Specifically, there is currently pending before the Commission the exceptions of PCI to the *Initial Decision*, FCC 03D-01, released on June 19, 2003 (hereafter the "ID") in this proceeding in which license forfeitures were proposed against PCI due to its continued provision of FM translator service in Alaska following Commission "...orders to the contrary." The subject modification in the Communications Act prohibits PCI from being "...fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary."

WHEREFORE, Peninsula Communications, Inc. respectfully requests that the Commission reopen the record in this proceeding and take official notice of above changes in the Communications Act of 1934 as contained in the Consolidated Appropriations Act, 2005.

Respectfully submitted,
Peninsula Communications, Inc.

By: 

Jeffrey D. Southmayd

Its Attorney

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Date: December 14, 2004

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent by first class United States mail, postage pre-paid, and email on this 14th day of December, 2003:

The Honorable Michael J. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

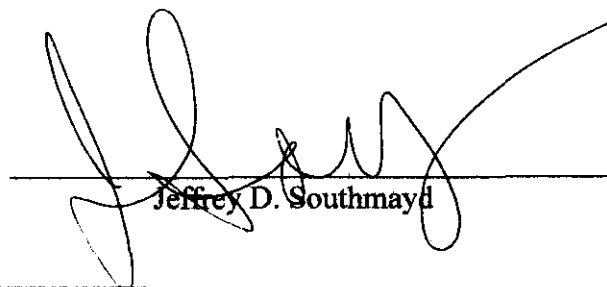
The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
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The Honorable Jonathan S. Adelstein
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Jeffrey D. Southmayd

* Via email.